



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

the court held that he might keep the shares he had bought but must return the part he inherited. It would be absurd to hold that the defendant had notice that the estate was held in trust when he inherited the one fifth, but that he had no notice when he bought the other four fifths. The true explanation is that equity will enforce the rights of the *cestui* against any person who has obtained the trust property wrongfully or without exercising due care, or who unjustly retains it.

If the position here maintained is sound it follows that a volunteer receiving the property with the consent of the *cestui* holds free from the trust; for the volunteer's conscience cannot be charged, since he is not enriching himself unjustly at the *cestui's* expense. The *dictum* in a recent Massachusetts case was to this effect. *Matthews v. Thompson et al.*, 71 N. E. Rep. 93 (Mass.). The court further added that this was not an assignment or surrender of an interest in land within the Rev. Laws c. 127, § 3, providing that no estate or interest in land shall be assigned, granted, or surrendered unless by an instrument in writing signed by the grantor. This statement also seems correct. Previous to the transfer, the beneficial interest in the property was in the *cestui*. Subsequent thereto, the transferee had the beneficial interest as well as the legal title. It was urged that the *cestui* must be taken to have transferred this interest. But the *cestui's* interest, which was merely a personal right to call for a conveyance from the trustee, was destroyed when the trustee conveyed the legal title to the transferee, and since, as we have seen, equity would create for him no new right, there was nothing left for him to convey.

RECORDING AS CONSTRUCTIVE NOTICE TO ONE CLAIMING NO INTEREST IN THE PROPERTY. — In this country recording acts were passed from the earliest days, and their general purpose finds a far wider scope here than in England. To prevent fraud and insure openness in dealing are the objects of such statutes. The records being easily accessible, it is evident that a failure or unwillingness to inquire into them must play a determining part in working out conflicting rights. Since *Twyne's case*,¹ decided in 1601, retention of possession by the mortgagor has given rise to a presumption of fraud, and in many states the presumption is now conclusive.² So that before the recording acts, a chattel mortgagee, who allowed the mortgaged property to remain in the mortgagor's hands was liable to have his rights cut off by an innocent purchaser or creditor.³ The recording acts gave the mortgagee, who recorded his mortgage, a right good against any one who subsequently acquired any interest in the goods from the mortgagor. This result is generally accomplished by saying that the record gives constructive notice to all the world. But to say that the filing of a mortgage gives constructive notice to all is to employ an unnecessarily broad, even a useless fiction. Was anything more purposed or effected by the mortgage recording acts, for instance, than to protect a mortgagee against subsequently acquired interests by placing knowledge within the reach of all? The whole world does not and was not intended to get notice of the recorded instrument. Thus, in several cases it has been held that a fire

¹ 3 Coke 80 b.

² See Williston's Cas. on Bankruptcy, 169 n.

³ *Woodward v. Gates*, 9 Vt. 358.

insurance company is not charged with notice of a recorded mortgage so as to waive a forfeiture clause for breach of condition against encumbrancing.⁴ But if the records operate as notice to all the world, the insurance companies would be charged with knowledge of the breach, where they accepted the premiums, and could not escape liability.

This question was neatly raised in a recent case where a commission merchant, ignorant of an existing mortgage on cattle, sold them and remitted the proceeds to the consignor. *Greer v. Newland*, 77 Pac. Rep. 98 (Kans.). The mortgagee recovered, in an action against the commission merchant, on a count for money had and received. The court argued that the record gave constructive notice, which is the equivalent of actual notice, and that, therefore, the defendant was in the same position as one who, knowing of a theft, sold stolen goods and gave the proceeds to the thief. Whether the defendant was liable in trover is immaterial to this discussion. But clearly the plaintiff should not be allowed to recover in quasi-contract. This claim can be sustained only on strict equitable principles.⁵ It is, surely, not equitable to construct, or, at the least, enlarge a liability on a fiction. The court properly deemed knowledge of the wrongfulness, in turning over the proceeds to the consignor, essential to a recovery. But such knowledge should not be imputed from the fact that the mortgage is recorded. The recording acts were never intended to apply to such a case. Such an unfortunate decision as this results from employing the fiction of constructive notice, instead of recognizing that recording really dispenses with the necessity of notice. This distinction was recognized, with the consequence that a contrary decision was reached, in at least one other case involving the very point here at issue.⁶

THE ATTITUDE OF BANKRUPTCY COURTS TOWARD PREFERENCES.—Although there has been some tendency to regard bankruptcy systems as established chiefly for the benefit of unfortunate debtors, yet in the opinion of the ablest authorities, their fundamental purpose is not so much to reinstate the insolvent debtor as to secure the equitable distribution of the bankrupt estate among the creditors.¹ It is to further this end that bankruptcy statutes have provisions penalizing creditors who take and hold preferences. Section 57 *g* of the National Bankruptcy Act of 1898 stipulates that "the claims of creditors who have received preferences shall not be allowed" unless such preferences are surrendered; and section 60 *b* provides that if the person receiving the preference or to be benefited thereby has reasonable cause to believe that a preference was intended, it shall be voidable by the trustee in bankruptcy.

In interpreting these enactments, the courts have stamped preferences with their disapproval. A creditor who has received a preference on any part of any claim is prohibited not only from proving the balance of that particular claim but also from proving any claim whatsoever unless he surrenders his preference.² Moreover, by the weight of authority, not only

⁴ *Wicke v. Iowa State Insurance Co.*, 90 Iowa 4.

⁵ See *Keener*, *Quasi-Contracts* 185.

⁶ *Frizzell v. Rundle*, 12 S. W. Rep. 918 (Tenn.).

¹ See 15 HARV. L. REV. 829, 834, 843.

² *In re Conhaim*, 97 Fed. Rep. 923.